

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR AND ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 91045-001

v

Blue Care Network of Michigan  
Respondent

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Issued and entered  
this 9<sup>th</sup> day of September 2008  
by Ken Ross  
Commissioner

**ORDER**

**I**  
**PROCEDURAL BACKGROUND**

On July 17, 2008, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation (Commissioner) under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On July 24, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

This case required review by a medical professional. Therefore, the Commissioner assigned the matter to an independent review organization (IRO). On August 7, 2008, the IRO completed its review and sent its recommendation to the Commissioner.

**II**  
**FACTUAL BACKGROUND**

The Petitioner, born XXXXX, is a Blue Care Network (BCN) member. Because of his disability, he is an eligible dependent on his father's health care coverage. That coverage is

defined in the BCN 1 Certificate of Coverage (the certificate). He also has secondary coverage with the Michigan Medicaid program.

The Petitioner has a history of neuromuscular scoliosis, contractures of the lower extremities, spastic cerebral palsy, and pelvic obliquity. The Petitioner has been experiencing back pain and having difficulty maneuvering his heavy wheelchair. He requested authorization and coverage for an ultralight wheelchair with a custom molded seat and back. BCN denied the request. The Petitioner appealed but BCN maintained its denial.

The Petitioner exhausted BCN's internal grievance process and BCN issued its final adverse determination letter dated July 2, 2008.

### **III ISSUE**

Did BCN properly deny the Petitioner authorization and coverage for an ultralight manual wheelchair with custom molded seat and back under the terms of the certificate?

### **IV ANALYSIS**

#### **PETITIONER'S ARGUMENT**

The Petitioner has both a power "scooter" and a manual wheelchair. Due to a change in his condition his manual wheelchair no longer fits or accommodates his needs. His mother says: "He has grown out of the chair, and also now requires a custom molded seat and back. The scooter does not accommodate the custom molded seating and back, therefore use of the scooter is limited to occasional long distances."

In addition to the scoliosis, he has a rapid heart rate and is missing digits on his hands, so he is not able to operate his current manual wheelchair for long periods. He still uses the scooter for long distances when he would not be able to use the manual wheelchair.

The Petitioner's mother notes that in February 2006, the Petitioner began working three days a week at XXXXX, in a skill building program where he does piece rate assembly work.

One of the requirements to be in the XXXXX program is that he be capable of independently taking care of his personal needs. His mother and therapists say that he is capable of standing and transferring independently. At XXXXX he uses his manual chair for mobility throughout the day and to alleviate pain and discomfort.

The Petitioner requested coverage for a lightweight wheelchair with custom molded seat because his condition has changed. The Petitioner's mother's says that he requires the molded seat and back to provide greater support for his spine. In a July 29, 2008, letter, the Petitioner's physician, XXXXX, MD, supported the request for a new wheelchair:

[The Petitioner] is a patient of mine with spastic quadriplegic cerebral palsy. He has severe neuromuscular scoliosis and pelvic obliquity. There are contractures of both of his lower extremities. The patient is 100% dependent on care. He is unable to control a manual wheelchair by himself for prolonged periods of time and thus was given a power wheelchair. Unfortunately, he has developed a severe scoliosis that is not accommodated by the power chair. In order to sit comfortably for prolonged periods of time, such as at his work in a skills building program where he works 3 days per week, he requires support for his spine which he cannot get in the power chair.

He is nonambulatory. He is in dire need of a new manual wheelchair with modifications for his scoliosis and pelvic obliquity.

The Petitioner's occupational therapist, XXXXX, OTR, in a letter dated May 6, 2008 also wrote in support:

[The Petitioner] is missing digits of both hands, which makes manually propelling a heavier wheelchair more difficult. \* \* \* At home, he relies on his wheelchair to complete self-feeding, some grooming and all of his home mobility. He is also able to complete toileting independently, by transferring to the toilet from the wheelchair.

The Petitioner wants BCN to provide coverage for a lightweight manual wheelchair with molded seat and back because it is medically necessary.

#### BCN'S ARGUMENT

In its final adverse determination, BCN denied the request for the lightweight wheelchair, saying:

The [grievance] Panel maintained the denial because [the Petitioner] was provided a scooter in 2004 and XXXXX indicated that he is unable to control a manual or power wheelchair by himself.

#### COMMISSIONER'S REVIEW

BCN will cover replacement wheelchairs when provided by an approved supplier and when prescribed or authorized by the Members Plan physicians. The certificate states in part:

##### **1.15 DURABLE MEDICAL EQUIPMENT**

\* \* \*

Benefits for the rental or purchase of durable medical equipment are limited to the basic equipment plus medically necessary special features prescribed by the Plan Physician. In addition:

\* \* \*

- B. The equipment must be obtained from Health Plan or from an approved supplier.
- C. The equipment must be prescribed or authorized by the Member's Plan Physician.

BCN also relied on its medical policy, "Durable Medical Equipment." That policy states in part:

##### **2100.1 Definition of Durable Medical Equipment**

\* \* \*

Replacement: Replacement of equipment which the beneficiary owns or is purchasing is covered in cases of loss or irreparable damage or wear and when required because of a change in the patient's condition.  
[Emphasis added]

The question in this case is whether an ultralight wheelchair with molded seat and back is medically necessary for the Petitioner. To answer that question, the Commissioner assigned the matter to an IRO. The IRO expert is a practicing physician, board certified in physical medicine and rehabilitation, and familiar with the medical management of patients with the Petitioner's condition. The IRO expert concluded that an ultralight wheelchair with molded seat and back is medically necessary for the Petitioner.

The IRO report said:

The MAXIMUS physician consultant noted that the records from the member's physical therapy evaluation indicate that the ultra light wheelchair was being requested to accommodate a special seating adaption for the [Petitioner] and to maintain independent mobility in his work environment. The MAXIMUS physician consultant also noted that the member has a power scooter, but does not use it at work. The

MAXIMUS physician consultant further noted that the [Petitioner] is able to propel a manual wheelchair for the distances present in his work environment. The MAXIMUS physician consultant indicated that the member has developed scoliosis as a result of his cerebral palsy. The MAXIMUS physician consultant also indicated that the [Petitioner] requires adaptive seating due to his scoliosis, which can only be accommodated by the requested wheelchair. The MAXIMUS physician consultant explained that the [Petitioner's] scoliosis may progress rapidly without this supportive seating. The MAXIMUS physician consultant also explained that such progression of the [Petitioner's] scoliosis would cause decline in his respiratory function. The MAXIMUS physician consultant indicated that the requested ultra light wheelchair is medically necessary to maintain the [Petitioner's] activities of living with his daily work environment. The MAXIMUS physician consultant also indicated that the requested ultra light wheelchair is medically necessary to prevent the rapid decline of the [Petitioner's] scoliosis.

In the IRO expert's opinion the requested wheelchair is medically necessary. The IRO recommendation is based on extensive expertise and professional judgment and is afforded deference by the Commissioner. The Commissioner can discern no reason why the IRO expert's recommendation should be rejected in this case.

The Commissioner notes that BCN, in its final adverse determination, denied coverage for the ultra light wheelchair because the Petitioner had received the scooter in 2004 and his doctor said he is unable to control a manual or power wheelchair by himself. However, as the IRO expert pointed out, the Petitioner "is able to propel a manual wheelchair for the distances present in his work environment." But even if it were true that the Petitioner could not control a manual wheelchair, that is not the sole determinant of the issue of the medical necessity. The IRO report explained that the requested wheelchair would "prevent the rapid decline of the [Petitioner's] condition" without regard to the Petitioner's ability to control it.

The Commissioner additionally notes that while the Petitioner currently has both a manual wheelchair and a scooter, there is nothing in the certificate that would prohibit benefits from being available for both, if both are medically necessary.

The Commissioner accepts the IRO expert's opinion and finds that the ultralight wheelchair with molded seat and back is medically necessary for the Petitioner and is therefore a covered benefit.

**V  
ORDER**

The Commissioner reverses BCN's July 2, 2008, final adverse determination. BCN shall authorize and cover an ultralight wheelchair with molded seat and back for the Petitioner.

BCN shall comply within this Order within sixty days and shall provide the Commissioner with proof it complied within seven days of compliance.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.